

K1DHTERO

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 In re Terrorist Attacks on  
4 September 11, 2001

03 MD 1570 (GBD) (SN)

Oral Argument

-----x

5 New York, N.Y.  
6 January 13, 2020  
7 10:20 a.m.

Before:

8 HON. SARAH NETBURN,

9 U.S. Magistrate Judge

10 APPEARANCES

11 COZEN O'CONNOR

12 Attorneys for Federal Insurance Plaintiffs

13 BY: SEAN P. CARTER

14 MOTLEY RICE, LLP

Attorneys for Burnett and Euro Brokers Plaintiffs

15 BY: ROBERT T. HAEFELE

16 KREINDLER & KREINDLER LLP

Attorneys for Ashton Plaintiffs

17 BY: STEVEN R. POUNIAN

ANDREW J. MALONEY

18 ANDERSON KILL P.C.

Attorneys for O'Neill Plaintiffs

19 BY: JERRY S. GOLDMAN

20 KELLOGG, HUBER, HANSEN, TODD FIGEL & FREDERICK, P.L.L.C.

Attorneys for Defendant Kingdom of Saudi Arabia

21 BY: GREGORY G. RAPAWY

ANDREW C. SHEN

22 MICHAEL K. KELLOGG

K1DHTERO

APPEARANCES CONTINUED

SALERNO & ROTHSTEIN

Attorneys for Defendant Yassin Abdullah Kadi

BY: PETER C. SALERNO

MOLO LAMKEN LLP

Attorneys for Dallah Avco Trans Arabia Co.

BY: ROBERT K. KRY

ERIC R. NITZ

K1DHTEO

(Case Called)

MR. POUNIAN: Steve Pounian from Kreindler & Kreindler, for the plaintiffs.

MR. CARTER: Good morning, your Honor. Sean Carter from Cozen O'Connor, on behalf of plaintiffs.

MR. HAEFELE: Good morning, your Honor. Robert Haeefe, Motley Rice, for the plaintiffs.

MR. GOLDMAN: Good morning, your Honor. Jerry Goldman, Anderson Kill.

MR. MALONEY: Good morning, your Honor. Andrew Maloney from Kreindler & Kreindler, for the plaintiffs.

MR. TARBUTTON: Good morning, your Honor. Scott Tarbutton, Cozen O'Connor, for the plaintiffs.

MR. RAPAWY: Good morning, your Honor. Gregory Rapawy from Kellogg, Hansen, for the Kingdom of Saudi Arabia.

MR. SHEN: Andy Shen from Kellogg, Hansen, for Saudi Arabia.

MR. KELLOGG: Good morning. Michael Kellogg from Kellogg, Hansen, on behalf of Saudi Arabia.

MR. KRY: Robert Kry, Molo Lamken, for Dallah Avco.

MR. NITZ: Eric Nitz, your Honor, also from Molo Lamken, for Dallah Avco.

THE COURT: Thank you.

Mr. Salerno is here.

MR. SALERNO: Yes, I am here, your Honor. There's a

K1DHTERO

1 very good chance I wouldn't speak. That's why I didn't stand  
2 up.

3 THE COURT: Welcome anyway.

4 Happy New Year to everybody. Thank you all for being  
5 here. Thank you to all the families who are here.

6 So we are here to talk about the next step of  
7 discovery in this case, namely, the depositions of the  
8 representatives of the Kingdom of Saudi Arabia. I have the  
9 letter filed on December 6 from the plaintiffs' executive  
10 committee and some follow-up letters from that, and the other  
11 letter that I'm looking at is the October 28 letter that the  
12 Kingdom filed in connection with its proposal for how to move  
13 forward.

14 As I said in my order scheduling today's conference, I  
15 don't think additional briefing is necessary. These are not  
16 really legal issues so much as sort of proportionality issues,  
17 and so I wanted to talk to the parties about how to move  
18 forward into the next phase of the litigation.

19 From my perspective, the topics for today's conference  
20 are the number of depositions that are appropriate, the  
21 location of those depositions, the issue that's raised in the  
22 October 28 letter about if a party affirmatively puts forward a  
23 declaration and the opposing party seeks to depose that person,  
24 how that deposition should be treated. I think there's also an  
25 issue about whether or not there should be additional formal

K1DHTERO

1 written discovery at this stage in the litigation. There's  
2 also the question of expert discovery and whether or not the  
3 Court should allow that. And then, finally, moving toward the  
4 renewed motion to dismiss.

5 So I reviewed the list that the plaintiffs' executive  
6 committee provided to me on December 6. The reason I wanted  
7 this list is to get a sense of exactly what categories of  
8 individuals the plaintiffs' executive committee seeks to  
9 depose; how many people they are seeking to depose within each  
10 category; and whether or not, based on their representation in  
11 this list, it seemed to me that there was a lot of duplication  
12 or not. So I calculated approximately 55 people on this list.  
13 I know that this list is not -- I guess it's probably both  
14 overinclusive and underinclusive, would be my guess, is how the  
15 plaintiffs would present it. But maybe I will begin, and we'll  
16 start the conversation about numbers.

17 I'll ask, Mr. Pounian, are you going to speak on  
18 behalf of --

19 MR. POUNIAN: Actually, we both are, your Honor.  
20 Excuse me. Mr. Carter was planning on beginning the  
21 presentation.

22 THE COURT: OK. That's fine.

23 Let me just remind everybody that this courtroom is  
24 gorgeous, but the acoustics are terrible. So if you could  
25 please speak into the microphone for my stake, for the

K1DHTERO

1 families' sakes, but most importantly, for the court reporter's  
2 sake.

3 MR. CARTER: Sure, your Honor.

4 As Mr. Pounian said, I'm going to begin. I'd like to  
5 discuss some general baseline considerations that I think  
6 should inform the Court's assessment of the number of  
7 depositions that are appropriate, and then Mr. Pounian will  
8 address some of the more specifics about the categories of  
9 witnesses.

10 The first issue that we think should inform this  
11 analysis, your Honor, is the documented propensity of certain  
12 of the principal witnesses to lie and the likelihood that many  
13 of the witnesses are going to be reluctant to be completely  
14 forthcoming in the context of deposition testimony. The 9/11  
15 Commission obviously indicated its assessment that Fahad  
16 al-Thumairy did not tell the truth with regard to the very  
17 basic and material facts and that there were problems with Omar  
18 Bayoumi's testimony to the commission as well.

19 We think that was borne out in the discovery process  
20 that we have seen so far, and because of that problem,  
21 plaintiffs need access to a fair number of witnesses who have  
22 personal knowledge of the events, transactions, and  
23 relationships to build the basic factual record. Some of those  
24 witnesses are only going to have a piece of the puzzle simply  
25 by virtue of the scope of their interactions being more limited

K1DHTERO

1 than some of the principals.

2 We also think it's important to ensure that there's a  
3 context in which this unfolds that ensures that there's real  
4 peril for witnesses who might have an inclination to not tell  
5 the truth and the full truth, and that peril will exist only if  
6 there's a chance they're going to be confronted with other  
7 witnesses who know the facts who are going to say something  
8 very different than they testify to.

9 A second consideration is the lack of documentary  
10 evidence that's been provided with regard to some of the most  
11 basic issues that are relevant to the Court's jurisdictional  
12 inquiry, as well as the inconsistencies that we've seen in some  
13 of the documents. As we've already indicated to the Court, we  
14 don't have basic documents on the day-to-day activities of some  
15 of these principals. We've been told that they don't exist at  
16 all, and as a consequence, the only way to really develop  
17 evidence with regard to those issues is to go out and talk to  
18 witnesses who have knowledge about those issues and to build a  
19 record through that kind of process.

20 The related consideration, your Honor, is that the  
21 Kingdom has obviously objected to conducting certain searches  
22 of repositories for records, and the Court has applied a  
23 balancing test. The Kingdom's argument has essentially been  
24 that searches of these large government repositories would be  
25 an undue burden for some of these things, but in many of those

K1DHTERO

1 cases, a deposition of witnesses who have relevant knowledge  
2 concerning the relationships and transactions is a far more  
3 simple, less burdensome, and elegant way that you go about  
4 ensuring that plaintiffs have the opportunity to develop  
5 evidence in support of their jurisdictional theories.

6 In terms of the burden associated with that, we think  
7 that the Kingdom's own behavior over the course of the  
8 deposition process with regard to the merits and personal  
9 jurisdiction defendants bears out that there is no real burden  
10 from the Kingdom's perspective associated with participating in  
11 depositions. The Kingdom has sent, in most cases, multiple  
12 representatives to each and every one of the personal  
13 jurisdiction and merits discovery depositions, even though they  
14 fall outside of the scope of the jurisdictional inquiry  
15 presently before the Court. In some cases there have been as  
16 many as four Kingdom representatives at those depositions.

17 We now understand that the Kingdom's involvement has  
18 gone beyond mere attendance at those depositions and involved  
19 far more active participation. We understand from one of the  
20 recent depositions, for instance, that there is a joint defense  
21 agreement in place between the Kingdom and the defendants  
22 which, we gather, has included involvement in the preparation  
23 of those witnesses for their depositions. In the context of  
24 the King Fahd Mosque depositions, your Honor, we know that  
25 there were communications between the Kingdom lawyer and



K1DHTERO

1 counsel representing those witnesses as well. So the Kingdom  
2 has made clear that attending depositions is not really a  
3 meaningful burden.

4 The fourth consideration, your Honor, is the nature of  
5 the Kingdom's own argument and defenses. The first part of  
6 that is that the Kingdom has offered its own narratives with  
7 regard to evidentiary issues where the record is relatively  
8 incomplete. Just to take an example, your Honor heard during  
9 prior argument that the Kingdom's position is that Omar  
10 al Bayoumi was, in fact, in the United States conducting a  
11 legitimate, sustained course of study to obtain what the  
12 Kingdom represented was effectively a graduate master's degree.

13 In order to address the Kingdom's narrative with  
14 regard to that point, we need to go out and take discovery of  
15 the educational institutions where he claims to have studied.  
16 We received some documentary evidence from them. The  
17 transcripts include codes that we need people to ferret out.  
18 We believe that the evidence that we've gathered from them is  
19 inconsistent with the Kingdom's narrative, but again, because  
20 that's the Kingdom's position, we need to be able to go to  
21 witnesses who know about it, who can testify about the actual  
22 rigors of the classes associated, what the codes on certain of  
23 the transcripts mean which seem to indicate involuntary  
24 withdrawal from classes for failing to attend. So we need to  
25 go through all of that.

K1DHTERO

1 The other thing that the Kingdom --

2 THE COURT: Those would be non-Kingdom depositions, is  
3 that correct?

4 MR. CARTER: Those are not, your Honor.

5 THE COURT: Those are not non-Kingdom or those are  
6 not --

7 MR. CARTER: No, I think Mr. Pounian will address  
8 this. There's a good number of third-party witnesses, and  
9 those are people that we want to go and depose and relative to  
10 which the burden on the Kingdom is particularly minimal.

11 The other argument the Kingdom has offered your Honor  
12 will recall in the context of the motion to dismiss, the  
13 Kingdom offered layered argument about the admissibility of  
14 every government document we've offered in support of our  
15 claims, claiming that they were hearsay or that they were  
16 preliminary investigative reports, and demanding that the only  
17 way plaintiffs could sustain their burden in the FSIA context  
18 was to come forward with some sort of direct testimonial or  
19 similar evidence in support of each and every basic point that  
20 might be in play in the litigation.

21 We, obviously, think the Kingdom is fundamentally  
22 wrong in regards to its claims about the FBI reports. They are  
23 admissible. They're government reports. They're not  
24 preliminary investigative reports of an administrative body.  
25 But it would be particularly inappropriate to allow the Kingdom

K1DHTERO

1 to argue, on the one hand, that plaintiffs must come forward  
2 with testimonial direct evidence on virtually every point while  
3 at the same time trying to prevent plaintiffs from having  
4 access to the very witnesses who have that testimonial and  
5 evidence.

6 We think, your Honor, that that broadly is what this  
7 is really about. The draconian efforts the Kingdom is making  
8 to limit the number of depositions that we have access to is  
9 part of a broader effort simply to limit the channels available  
10 to plaintiffs to develop admissible evidence in support of  
11 their claims. Your Honor will recall at the outset of  
12 discovery the Kingdom suggested, for example, that we should be  
13 limited to only five depositions; that we should have no  
14 opportunity to go out and obtain discovery from third parties.  
15 And these are all part of a broader strategy here, your Honor,  
16 to simply limit our ability to get to the admissible evidence  
17 the Kingdom is then going to claim that we have to have in  
18 order to proceed with our claims.

19 With that context, I'll turn it over to Mr. Pounian to  
20 discuss some of the specifics.

21 THE COURT: OK.

22 MR. POUNIAN: Thank you, your Honor.

23 I think, as Mr. Carter explained, the depositions here  
24 are not only to pursue discovery of the Kingdom, but they're  
25 also necessary for us to preserve the record that we need to

K1DHTERO

1 present at the jurisdictional hearing. We need the evidence of  
2 these witnesses over whom we have absolutely no control. None  
3 of the witnesses in this case, your Honor, are under the  
4 control of the plaintiff, unlike the Kingdom. We have to find  
5 the witnesses, where they are, and they're scattered across the  
6 world. None of them are within the subpoena range of this  
7 Court. It's a laborious, difficult process for us to go ahead,  
8 go through that, to do that. We're ready to go ahead and do  
9 it, but we need the freedom and the flexibility to do it.

10 Our suggestion to your Honor is, first of all, we need  
11 a deposition protocol in effect with the Kingdom. One of the  
12 key parts of that is last February we served on the Kingdom a  
13 preliminary list of witnesses. We never heard any response  
14 from them as to whether or not they were available or not,  
15 whether they had any objections to producing those witnesses.  
16 And then in December we again served a list, more expanded  
17 list, with actual descriptions of testimony, which we served in  
18 December. We still have not yet heard whether those witnesses  
19 available and whether the Kingdom is going to oppose the  
20 production of any of those witnesses for depositions in this  
21 case. So we believe that process has to be determined first,  
22 before we can sit down and say there's going to be a certain  
23 number of depositions that we take.

24 THE COURT: Sorry. Why is that so? I agree you need  
25 to know who's going to be produced, but why do we have to wait

K1DHTERO

1 to find out that answer? The number that I order will not be  
2 driven by how many are going to be objected to or produced.

3 MR. POUNIAN: Well, if a certain witness is  
4 unavailable, your Honor, we may need -- it may change the  
5 calculus in terms of other witnesses that we need. For  
6 instance, the one witness they have said is ill, we don't know  
7 if he's available or not, Mr. Sowailem. If his testimony's not  
8 available, we may need two or three people from his office to  
9 testify to replace the knowledge of Mr. Sowailem to present in  
10 the record before the Court.

11 So it's that type of calculus. We're dealing a little  
12 bit in the blind because we don't know -- we don't really know  
13 what the situation is from the Kingdom's perspective and who  
14 they're going to actually say this person's not available or  
15 this person we won't produce, and then we have to resolve those  
16 issues before your Honor for the Court's decision.

17 There's also issues regarding the protocol itself  
18 regarding the location of the depositions, your Honor, that we  
19 think may be best first decided on a meet-and-confer basis to  
20 determine on specific witnesses if there can be any basis to  
21 agree, or not, before we go forward with that process, which  
22 your Honor mentioned would be here today.

23 In terms of the witnesses, in terms of the number,  
24 it's a question really of getting into the testimony, finding  
25 out what witnesses say. Depending on the testimony, as

K1DHTERO

1 Mr. Carter said, if someone lies during the testimony, then we  
2 have to call the FBI witness who was present at the 302 to  
3 challenge that testimony or we have to present another witness  
4 to challenge the testimony. So the number --

5 THE COURT: Sorry to interrupt you, but some of those  
6 witnesses -- for instance, in that hypothetical, if the Kingdom  
7 puts forward a witness that you believe has lied during his  
8 deposition and your basis is because an FBI agent that you're  
9 working with tells you otherwise, wouldn't that FBI agent just  
10 be able to put forward a declaration setting forth her  
11 particular view of the facts? That wouldn't be an additional  
12 deposition, would it?

13 MR. POUNIAN: Well, we would need -- first of all, we  
14 have no control over that FBI agent to have them submit a  
15 declaration. We would have to go through the process with the  
16 Department of Justice of taking the deposition. And there's a  
17 whole process. There's regulations that we have to follow in  
18 seeking the permission of the Department of Justice to take the  
19 deposition. We can't simply go and get a declaration in that  
20 instance.

21 THE COURT: Have you started that process?

22 MR. POUNIAN: Well, we're waiting for the testimony.  
23 We've discussed the issue. I think we've raised the issue in  
24 terms of the list that we presented because the FBI agents that  
25 we need, or we anticipate we'll need, are on our list. So

K1DHTERO

1 they're there, but it's a question first of hearing the  
2 testimony and then securing the witness. We can't take the  
3 testimony of the witness before we take the testimony, let's  
4 say, of Mr. Thumairy to know what he has said to then say, is  
5 that -- to get the contrary testimony to prove the truth.  
6 Because, first, if Mr. Thumairy says, "I never met the  
7 hijackers," and then we have other proof from the record that  
8 shows that he did, then that has to go in after Mr. Thumairy  
9 testifies to show that his testimony is false.

10 THE COURT: I understand all of that. To the extent  
11 that government bureaucracy is slow and you know there are  
12 certain agents you're going to want to depose --

13 MR. CARTER: Your Honor, if I could just address that  
14 very quickly. One of the catch-22s of the *Touhy* process, as  
15 your Honor is familiar with, is that the government often won't  
16 present a witness to testify if there's a potential that the  
17 testimony's available from another source. So I think we are  
18 going to get caught in situations here where we may ask for  
19 testimony and the government may very well tell us, well, let's  
20 see if other people testify to those facts, thus obviating the  
21 need of this person to testify. There's a little bit of a  
22 sequencing issue with regard to that. I just wanted to address  
23 that.

24 THE COURT: I think it's worth it to maybe have a  
25 conversation. I don't know if it's with Ms. Vargas and

K1DHTERO

1 Ms. Normand, who I don't think are in the courtroom today, just  
2 to discuss what makes sense as far as moving forward on that.  
3 It may be that there are preliminary things that can be done  
4 just to start that process, and then if the holdup is going to  
5 be, well, we need you to prove that this information cannot be  
6 obtained from defendant witness X, at least you can get  
7 clearance, assuming you can make that showing, rather than  
8 having to start the entire process once the witness has  
9 testified in a way that you think justifies the need for the  
10 FBI deposition.

11 OK. You can proceed.

12 MR. POUNIAN: Thank you, your Honor. I think that  
13 would make sense for us to go ahead and do that.

14 In terms of the discovery today, we have noticed four  
15 depositions. The first one we noticed, we served a subpoena in  
16 September of 2018 on a Mr. Al Thumairy. The deposition still  
17 has not taken place, through no doing of our own. There's been  
18 extensive motion practice of which your Honor's aware, and we  
19 still don't have a date for the deposition. It hopefully will  
20 take place next month, but that has been an 18-month process to  
21 get a single deposition from a key witness in the case.

22 Similarly, Mohdhar Abdullah, last May we served  
23 letters rogatory for his deposition in Sweden, and the  
24 deposition is now set for March. But I'm told from Swedish  
25 counsel that the witness, the witness may choose not to appear



K1DHTERO

1 at the first instance and only can be then -- the process of  
2 bringing the witness to court only begins after the witness  
3 does not appear the first time. So it may take -- we're hoping  
4 the witness appears in March. That's our plan, but it may be  
5 that he doesn't appear, so we'll have to go back to take that  
6 testimony.

7 So the process involving all of these witnesses over  
8 whom we have no control, it has to take into account the fact  
9 of serving the subpoenas, working with other lawyers, and  
10 working with the government to get the witnesses and to  
11 assemble it all and timing -- with the King Fahd Mosque, we had  
12 to negotiate for six months with the Mosque to work out a  
13 window of time when the witnesses were here in the United  
14 States. And then on the very eve of the depositions, there was  
15 an emergency application to delay the depositions, which we  
16 then had to go in and successfully oppose, and then the Kingdom  
17 changed its position to allow the deposition to go forward.

18 So we don't know, your Honor, what issues like this  
19 are going to come up, and we need the system to be flexible to  
20 account for what may happen so that we can get the proof that  
21 we need to assemble what we need for the hearing. As I said  
22 before, this is our only opportunity to do that. These are  
23 like the equivalent of the *de bene esse* depositions for the  
24 trial, and we don't have -- you mentioned before going and  
25 getting a declaration from someone to come in and bring before

K1DHTERO

1 the Court. We don't have that luxury. We don't have control  
2 of the witnesses to do that. The only option we have is to  
3 take the depositions, and that's why the number has to  
4 accommodate our need to preserve that evidence for the hearing  
5 and for the trial, because there's no other -- we have no other  
6 remedy, nowhere else to turn, to get the evidence.

7 And the Kingdom's argument about ten depositions from  
8 Rule 30, Rule 30 actually says that that number must  
9 accommodate, must be altered to accommodate the requirements of  
10 Rule 26. Relevance, proportionality, that is the test that  
11 applies here, what are the relevant depositions that plaintiffs  
12 need, how many relevant depositions do we need that are not  
13 cumulative, but that we meet that relevance test. That is the  
14 test that really is at play here, your Honor, not an arbitrary  
15 number. Because the proof in this case is extraordinary, and  
16 unprecedented in terms of the number of different issues  
17 involved and the fact that it involves a criminal conspiracy  
18 conducted by Saudi government officials exactly 20 years ago,  
19 right now as we're here in this courtroom, in the year 2000 in  
20 California, and that requires that we be allowed to ferret out  
21 the facts, go to witnesses. There's so much conflicting proof  
22 in the record that it's like a maze. We have to present it all  
23 to get to the truth. That's the process that we have to go  
24 through, your Honor.

25 I don't know if your Honor has any specific questions

K1DHTERO

1 about the list itself and the categories in the list. I'd be  
2 happy to answer those.

3 THE COURT: I don't. The categories and the  
4 information which was helpful for me was more for me to get a  
5 sense of the types of people that you anticipate calling and  
6 the subject matter. So I don't have a specific inquiry, and I  
7 would not direct that you depose person A over person B.  
8 Obviously, I'll leave that to your discretion.

9 Before I turn over to the Kingdom, you mentioned  
10 needing a protocol and you mentioned wanting to have further  
11 meet-and-confer with the Kingdom with respect to the location  
12 of the depositions. Can you tell me sort of how long you think  
13 that process would take, whether or not a deposition protocol  
14 is necessary? I know we had quite an extensive one for the  
15 other defendants because I think there were a little bit more  
16 moving parts, so it was a little bit more complicated. And  
17 here, we're dealing with a sovereign nation, so I think some of  
18 the interests are different than they were in connection with  
19 the other depositions and that deposition protocol.

20 Can you give me a sense of what you think, I guess, of  
21 whether or not there's a need for a protocol; if so, how long  
22 you think that will take for you and the Kingdom to talk about  
23 that; and the issue of locations.

24 MR. POUNIAN: Mr. Carter's going to address that.  
25 Thank you, your Honor.

K1DHTERO

1 THE COURT: Sure.

2 MR. CARTER: Your Honor, as a general matter, we think  
3 the existing protocol provides a very good baseline in most  
4 areas. This is a matter of a handful of areas where we think  
5 tweaks are appropriate, and we probably assume that the Kingdom  
6 would be of the same mind.

7 As part of that process, I think we'd give a bit more  
8 thought as to specific witnesses and whether or not we can  
9 reach agreement on at least some subset of witnesses on  
10 location before having to present a dispute to your Honor for  
11 resolution with regard to others. I would think that we could  
12 complete that conversation and have the issue fully -- any  
13 disputed issues fully before your Honor by this time in  
14 February without too much trouble.

15 THE COURT: A month?

16 MR. CARTER: Well, I'm just -- it could be three  
17 weeks. I'm just assuming, with schedules, we can start having  
18 the conversation this week. It may very well be we can do in  
19 two weeks.

20 THE COURT: OK. Great. Thank you.

21 Who's going to be speaking on behalf of the Kingdom?

22 MR. RAPAWY: That will be me, your Honor.

23 THE COURT: That's you, Mr. Rapawy.

24 MR. RAPAWY: Thank you, and good morning.

25 Your Honor, Judge Daniels authorized limited targeted

K1DHTEO

1 discovery in March 2008. We are now coming up on two years of  
2 that process. In the document phase of that discovery, we  
3 produced more than 5,000 documents, more than 8,700 pages, and  
4 that's involved multiple searches of government facilities,  
5 including some very sensitive diplomatic facilities that we  
6 were not obligated to search but did so voluntarily as part of  
7 our cooperation with this process.

8 In our view, that process has not produced any shred  
9 of evidence to support the allegation that Mr. Al Bayoumi and  
10 Mr. Al Thumairy acted at the direction of senior Saudi  
11 government officials in assisting the hijackers, allegedly. In  
12 fact, the FBI has now described the origin of that allegation  
13 as an investigative theory, and we look forward to an  
14 opportunity to show that that the investigative theory was not  
15 and has never been supported by any evidence.

16 I think the Court has previously recognized Saudi  
17 Arabia's interest in wrapping up this discovery process and  
18 getting to our renewed motion to dismiss, and we think that  
19 that is best served by setting a reasonable limited period for  
20 a reasonable limited number of depositions. We think it should  
21 be about ten depositions and in about three months.

22 I think the witness list that plaintiffs have provided  
23 only underscores the need for the Court to set those limits,  
24 which I understand the Court is looking at doing today. You  
25 had counted 55 current or former Saudi officials on their list.

K1DHTERO

1 We had gotten to 54, but some of them are categories, so it's  
2 kind of a judgment call on how you count. Most of those  
3 individuals cannot be compelled to testify without voluntary  
4 consent of either Saudi Arabia or the original individual or,  
5 in some cases, both for a number of reasons. One of those  
6 reasons is that many of them are current or former diplomatic  
7 or consular employees who are immune from compelled testimony  
8 under the Vienna Convention. Another is that a number of them  
9 are high-ranking officials who cannot be deposed without a  
10 special showing of need that we do not believe can be made on  
11 this record. And a third is that a number of those individuals  
12 are former employees not currently employed by the Saudi  
13 government and outside the subpoena jurisdiction of the court.  
14 So they would be appearing, if they choose to do so,  
15 voluntarily.

16 THE COURT: Let me ask you a question on this topic.  
17 One of the things that, I think it was Mr. Carter, but the  
18 plaintiffs raised was a frustration that they had provided you  
19 with this list in December and hadn't heard anything back from  
20 the Kingdom with respect to the willingness to produce certain  
21 witnesses. How quickly can you respond to that list from the  
22 December letter, indicating whether or not these individuals  
23 would be available and presented for deposition?

24 MR. RAPAWY: Your Honor, we had not responded to that  
25 list. And the previous list in February was also mentioned. I

K1DHTEO

1 think we indicated this at the time. We didn't view either of  
2 those lists as being reasonable, good faith efforts to identify  
3 a specific number of people who were going to be deposed in  
4 this case. I think --

5 THE COURT: But I think one of their issues would be  
6 if there's ten people on a particular topic and you say, for  
7 whatever reason, I'm not producing five of them because of  
8 various immunities or for whatever reasons you have, they would  
9 like to know that before they select the person that they're  
10 going to call for a deposition.

11 MR. RAPAWY: You know, your Honor, I think we can  
12 certainly -- if your Honor directs us to respond to the list,  
13 we can, of course, respond to the list. I think it will  
14 probably take us at least a couple of weeks to figure out.  
15 We've started this process, to be honest, internally of trying  
16 to identify the particular issue -- there's two issues that  
17 require a little bit of verification on that. One of them is  
18 making sure we are sure who is and isn't subject to Vienna  
19 Convention protection for compelled testimony which the Kingdom  
20 hasn't waived yet, and I'm certainly not authorized to waive  
21 that today. The other is making sure that we understand who is  
22 a current or former employee with respect to their employment  
23 status with the Kingdom, because those individuals who are  
24 former employees would have to voluntarily agree to testify.  
25 It might take a little bit of time to, I mean, determine who of

K1DHTERO

1 the former employees would be willing to voluntarily testify.  
2 We haven't met with all the individuals on this list, but I can  
3 certainly -- we can certainly start that process right away if  
4 that's what your Honor wants us to do.

5 THE COURT: OK. Thank you.

6 MR. RAPAWY: I do think that ten depositions could, in  
7 theory, cover the individuals who are actually likely,  
8 reasonably likely, to have personal knowledge of the events  
9 here. I mean, that would include Mr. al Bayoumi, Mr. al  
10 Thumairy, three or four candidates for the senior official who  
11 allegedly gave them these directions, and three or four for the  
12 subagents who carried out directions from them, plus  
13 one 30(b)(6) representative. That gets to ten.

14 I think -- obviously, it's in your Honor's discretion.  
15 We're not saying that you don't have discretion to vary that  
16 and choose what you see fit, but I don't think it's an  
17 unreasonable proposal. In fact, I think it is a reasonable  
18 one. The Mosque depositions that are already taken should  
19 count against that limit. I don't know that they helped  
20 plaintiffs a great deal. We told them at the time they should  
21 count against whatever limit your Honor would ultimately set,  
22 and I think that's consistent with the rules. They've  
23 also mentioned or they've also noticed --

24 THE COURT: Were you responsible as counsel for  
25 organizing those depositions? Were you their lawyer?



K1DHTERO

1 MR. RAPAWY: No. No, your Honor.

2 THE COURT: OK.

3 MR. RAPAWY: Our proposal is a limit that includes  
4 third-party depositions. Obviously, if your Honor is  
5 restricting it specifically to Kingdom of Saudi Arabia  
6 witnesses, that would be a different -- it's a different  
7 question, I suppose.

8 I do want to emphasize that on the question of the  
9 burden, the burden that we're concerned about is not the burden  
10 on our law firm of appearing at depositions. We can do  
11 whatever your Honor wants. The burden that I think is relevant  
12 with regard to these witnesses and with regard to Saudi  
13 Arabia's legitimate interest in being protected from litigation  
14 where there's no jurisdiction over it is the burden on the  
15 witnesses, the individuals, the current employees who can be  
16 forced to testify only because they are employees of a  
17 sovereign government and the former employees who, well, as I  
18 indicated, can't be forced to testify at all.

19 I also don't think that -- I understand your Honor may  
20 not be including the third-party depositions in the same list,  
21 but I don't think we should go into this on the assumption that  
22 *Touhy* requests will necessarily be granted by the United  
23 States. My understanding is that they generally haven't been  
24 with regards to the merits discovery. Of course, as you  
25 indicated, Ms. Normand and Ms. Vargas are not here to speak to

K1DHTERO

1 that, but I don't think forming this schedule around an  
2 expectation that the *Touhy* process is necessarily going to be  
3 complete or going to be successful before the process ends is  
4 realistic or justified.

5 There was some brief discussion of the location  
6 issues. What we indicated in our letter was that we would be  
7 happy to meet and confer on that issue on an individual basis  
8 once we've identified a reasonable number of individuals who  
9 are going to be deposed. I think some may voluntarily consent  
10 to travel outside the Kingdom, and I do think that the existing  
11 protocol, as your Honor had -- as your Honor's comments may  
12 have indicated, I don't want to characterize, was not  
13 negotiated with bearing in mind the interest of a sovereign  
14 nation in not being compelled to produce its own government  
15 employees outside its borders, which I think does situate us  
16 differently from the other defendants.

17 That is really pretty much all I have on the question  
18 of the number of depositions. Obviously, there's also the  
19 question of timing, but it may make more sense to address that  
20 once your Honor has given us a sense for what you have in mind  
21 with regard to the number.

22 THE COURT: Very well. Can I just ask one question  
23 while you're standing, and then I'll just confirm with the  
24 plaintiffs.

25 In your October letter, you indicated this concept of

K1DHTERO

1 certain witnesses who would be affirmatively put forward by way  
2 of written declaration and that there would be an understanding  
3 that the receiving side could then depose that person and it  
4 would not count against the deposition count. Is that correct?

5 MR. RAPAWY: That was what we had proposed, your  
6 Honor, and I do think that is a good way to avoid surprise.  
7 We've heard today that they have no witnesses under their  
8 control who are likely to provide -- who they can call to  
9 provide declarations. If that's the case, then I guess their  
10 list will not consist of anyone. But we think that mutual  
11 identification at an early point in the process, while there's  
12 still time to take those depositions, will avoid a situation in  
13 which, frankly, either side submits a declaration and the other  
14 side said I didn't know that person was going to testify.

15 THE COURT: I assume, for purposes of this discussion,  
16 that we are not talking about what could broadly be described  
17 as an expert witness. I'm assuming we're talking about sort of  
18 personal knowledge witnesses?

19 MR. RAPAWY: Yes, your Honor. The proposal had been  
20 for fact declarants to be exchanged. Our position, as we set  
21 forth in the letter, was that there should not be any expert  
22 witnesses in this limited jurisdictional discovery. I  
23 understand, of course, there's disagreement on the other side  
24 about that, but we weren't intending to propose that as  
25 occurring this early in the stage -- in the process.

K1DHTERO

1           THE COURT: I think those are all of my questions for  
2 you. I checked before I took the bench. Ramadan this year  
3 starts on April 23 and goes through May 23. Is it safe to  
4 assume that that 30-day period is one that would make it  
5 difficult for your clients to appear for deposition?

6           MR. RAPAWY: I think, yes, your Honor. I think that  
7 probably is accurate, and I appreciate the consideration. We  
8 do think that most, if not all, the depositions can and should  
9 be wrapped up before that time, but if they're not going to be,  
10 that month would probably be a problem for the observant  
11 witnesses, which are going to be most of them on our side, if  
12 not at all.

13           THE COURT: Well, you tell me that it's going to take  
14 you, I'm going to say, three weeks for you to get back to the  
15 plaintiffs just on who on their list is going to voluntarily  
16 appear and for whom you will not object. So that gets us  
17 pretty close to the middle of February. Let's assume that you  
18 all could even agree on depositions within another couple of  
19 weeks. That's getting us into March. I think it's going to be  
20 tough to do that. That was my hope as well, but I think it may  
21 be tough to accomplish that.

22           MR. RAPAWY: I think if you're going to order us to  
23 respond to the entire 60-person list before they have to pick,  
24 then, yes, that introduces a complication I hadn't previously  
25 considered, your Honor.

K1DHTERO

1           THE COURT: OK. With respect to responding to that  
2 list, do you think you could simultaneously indicate who  
3 would -- so there's at least two questions to answer: One is  
4 whether or not the person will be produced, understanding that  
5 there are various grounds on which somebody might not be  
6 produced, meaning, they may choose not to participate, the  
7 government may preclude them from participating; and then  
8 secondly, if someone is willing to appear for a deposition,  
9 whether or not they would appear voluntarily outside of Saudi  
10 Arabia. Do you think both of those questions could be answered  
11 within the next three weeks?

12           MR. RAPAWY: I can't promise we won't have any  
13 stragglers, your Honor, if there are people who are hard to get  
14 ahold of. We could certainly make a good faith effort to do  
15 that, and it doesn't seem unreasonable.

16           THE COURT: OK. Thank you.

17           MR. RAPAWY: I'm sorry, your Honor.

18           (Counsel confer)

19           MR. RAPAWY: Also, a good caveat, there are one or two  
20 people on the list who we don't actually agree are Saudi  
21 government officials. One of them is Alp Karli.

22           THE COURT: Al?

23           MR. RAPAWY: I'm sorry. The name is Alp Karli, A-l-p,  
24 K-a-r-l-i. Your Honor will probably recall that there was some  
25 dispute as in between the plaintiffs, the Kingdom, and Dallah

K1DHTERO

1 Avco as to who exactly he worked for at the time, but to the  
2 extent that we're not able to find individual people, then that  
3 would be another -- that may be the case with regard to some  
4 individuals.

5 THE COURT: OK. Thank you.

6 Anything the plaintiffs would like to add?

7 MR. CARTER: Your Honor, I have one or two very quick  
8 points. I think Mr. Pounian has a few. Mr. Rapawy indicated  
9 that they were seeking --

10 THE COURT: Could you bring your microphone a little  
11 closer.

12 MR. CARTER: Sure. Mr. Rapawy indicated they would be  
13 seeking a limit that would apply to third-party witnesses.  
14 Your Honor, we don't think that's appropriate. Mr. Rapawy  
15 noted that the burden that the Kingdom's concerned about here  
16 is not the burden on the law firm and traveling to depositions,  
17 it's on the burden of the government officials in appearing.  
18 That's not implicated with regard to the third parties. And  
19 the limit that they're proposing wouldn't even cover the people  
20 who have direct dealings with Bayoumi, Thumairy, and the  
21 hijackers. It, obviously, would not also extend to third  
22 parties like the educational institutions where Bayoumi  
23 allegedly studied and who we need to now depose because of the  
24 Kingdom's narrative. We just don't think that the third-party  
25 issue should be part of this at all.

K1DHTERO

1 With that, I'll turn it over to Mr. Pounian.

2 MR. POUNIAN: Your Honor, we are willing to start  
3 depositions now and start a process of doing some of these  
4 third-party witnesses that Mr. Carter discussed so that we're  
5 not wasting any time and that we're moving ahead. I guess part  
6 of the problem has been since the Kingdom last year said --  
7 came up with this ten-limit concept, it's kind of put a chill  
8 on us, saying I don't want to go out and take a deposition of a  
9 college in San Diego if somehow we're going to be limited in  
10 the number of depositions we can take in the case.

11 I'm not going to respond to -- I'll let the papers  
12 we've submitted to the Court respond to the claims that Saudi  
13 Arabia has made about the FBI 2012 report which involves a  
14 criminal investigation that was against three Saudi government  
15 officials. So we're here not to debate those issues, your  
16 Honor, which are very serious, but we are willing to proceed.  
17 We want to proceed fast. We don't want to take more  
18 depositions than we have to. We just want to take enough to  
19 prove our case, but we need the flexibility to do that, your  
20 Honor. That's the point I wanted to make.

21 THE COURT: Understood.

22 Yes.

23 MR. RAPAWY: I'm sorry, your Honor, one more point I  
24 wanted to just raise, which is this question of the 35 unnamed  
25 third-party witnesses, if what your Honor is contemplating

K1DHTEO

1 today includes third-party witnesses, but we do believe that to  
2 the extent that they have a list of third-party witnesses, at  
3 some point that should be disclosed to us. And if, as they  
4 have suggested, they are not comfortable disclosing that  
5 information to the Kingdom, that's a matter on which they  
6 should seek relief from the Court and do so promptly, rather  
7 than simply suggest that there's this unidentified pool of  
8 witnesses out there that they don't know who they are -- or,  
9 rather, they do know who they are, we don't know who they are,  
10 and the process should be conformed around that list.

11 THE COURT: Understood.

12 Yes.

13 MR. POUNIAN: We could submit the list *ex parte* to the  
14 Court, but I don't know if the Court would allow that or the  
15 Kingdom would object to that. But there are witnesses who have  
16 fears of having their names released to the Kingdom, I think  
17 legitimate fears given the history --

18 THE COURT: And these are individuals that have come  
19 forward to the plaintiffs?

20 MR. POUNIAN: That we have met with, that we've talked  
21 to, yes, your Honor.

22 THE COURT: So you're in contact with these people?

23 MR. POUNIAN: Yes, your Honor.

24 THE COURT: Would these people -- I don't think I  
25 gave you an opportunity to respond, so you can also respond



K1DHTERO

1 more broadly to the proposal where a party would be able to  
2 submit a declaration on the facts, and the receiving party  
3 could then depose that person and it would not count toward the  
4 deposition count.

5 So two questions for you: One is do you agree with  
6 that concept? And two, with respect to these 35 individuals,  
7 are they individuals that you would depose yourself, or are  
8 they individuals that you would put forward a declaration?

9 MR. POUNIAN: We would depose them ourselves, your  
10 Honor. As I said, we have no control over people to -- I can't  
11 go, say, please fill out this -- sign this declaration. I  
12 don't think we're in that kind of situation. We're taking --  
13 we're going to have to take depositions.

14 THE COURT: And there are people who either will  
15 voluntarily appear for deposition or are within the Court's  
16 subpoena power?

17 MR. POUNIAN: Well, all the witnesses, I believe, are  
18 going to have to be subpoenaed, your Honor, wherever they are,  
19 wherever they are located.

20 We have not yet received any list from Saudi Arabia of  
21 its witnesses in this case is another issue. But in terms of  
22 the concept of identifying people who will be presented in  
23 terms of by declaration instead of in person -- I apologize,  
24 your Honor -- that concept, I think, broadly makes sense, but  
25 it's how it's executed is an issue. There will have to be --

K1DHTERO

1 those people will be deposed regardless. They have to be  
2 available to be deposed regardless. So it's a matter, really,  
3 of scheduling the depositions of those persons, and their  
4 testimony will be taken, and that will be the trial testimony  
5 that's in the case for the hearing in the case that will be  
6 conducted on jurisdiction.

7 THE COURT: Yes.

8 MR. RAPAWY: Your Honor, very briefly. We certainly  
9 would object to an ex parte submission that we would not get to  
10 see about these individuals. If the question of witness  
11 safety -- if the implication is that they want an attorneys'  
12 eyes only protective order, we don't agree that that would be  
13 justified, but it's something they could move for, and then the  
14 Court could decide how to proceed. But this is not a situation  
15 that ought to -- at the very least, our firm needs to know who  
16 these individuals are so we can prepare to take their  
17 depositions.

18 THE COURT: Understood.

19 OK. What I would like to do is direct that by  
20 February 3, which is three weeks from today, the Kingdom is to  
21 respond to the list. I think your count is correct,  
22 Mr. Rapawy, it's 54, of the witnesses on the December 6 letter.  
23 Advise the plaintiffs' executive committee whether or not --  
24 as to each witness whether or not they will be produced for a  
25 deposition. If they will not be produced for a deposition, if

K1DHTERO

1 that's because they refuse to voluntarily appear and they're  
2 not under the control of the Kingdom or because the Kingdom is  
3 asserting some sort of immunity or privilege or whatever reason  
4 is the grounds for that person not appearing. And if the  
5 person is prepared to appear for a deposition, to indicate  
6 whether that person will voluntarily appear outside of the  
7 Kingdom or whether that person is going to insist on the  
8 deposition taking place within the Kingdom. Also, you  
9 mentioned that there are potentially a couple of witnesses on  
10 this list that the Kingdom does not believe are either Saudi  
11 citizens or former employees. You should also indicate, with  
12 respect to those witnesses, if that's the reason why you can't  
13 produce them yourself. So that's going to be on February 3.

14 Then I would like the parties to meet and confer with  
15 respect to that. Then on February 21, I want you to file with  
16 the Court a proposed deposition protocol. I haven't looked at  
17 the old deposition protocol recently, so I don't know whether  
18 or not it's correct to say that that is a good model. I know  
19 it's one that was heavily negotiated. There may be things in  
20 it that are appropriate to include, and we may not need all of  
21 the information in it. So you should be working towards that.  
22 It seems to me that that's something that can happen, at least  
23 in the first instance, even before the Kingdom gets back to the  
24 plaintiffs' executive committee on individuals. The goal is to  
25 get me a final draft by the 21st, but I do think issues about

K1DHTERO

1 location are important to discuss then.

2 I'm going to set aside, for now, a deadline for these  
3 depositions to take place. I will tell you, to give you all  
4 some sense of what I came to the bench thinking, was that it  
5 would close on May 13. So that gives you a sense of what I'm  
6 thinking about. And that contemplated 30 days from today  
7 towards scheduling. I realize now, given what we've just  
8 discussed, that we may need a little bit more time than that  
9 just to figure out who, in fact, will be produced and will not  
10 be produced and for the parties to discuss that. So I think  
11 it's going to take more than 30 days from today for the parties  
12 to agree on witnesses and pick dates for their deposition, but  
13 that gives you some sense of how I was thinking about this.

14 I agree with the plaintiffs that depositions of the  
15 Kingdom should be counted separately than nonparty or  
16 third-party depositions, and so my numbers are going to be --  
17 one would not count towards the other. I've looked over all of  
18 the information that's been presented to me, and I've thought  
19 about what is appropriate in this case. I think 25 depositions  
20 of Kingdom officials is a fair number. I think that will give  
21 the plaintiffs sufficient time to depose more than one person  
22 in each category provided, and in some instances, I've assumed  
23 that there will be multiple individuals per category. Again,  
24 I'm not directing who should be deposed, but I think that  
25 number contemplates the needs that the plaintiffs have fairly

K1DHTERO

1 set forward.

2 With respect to nonparty witnesses, I'm going to allow  
3 15 depositions, and I do think the Kingdom -- I'm sorry, the  
4 Mosque depositions should count towards that. So some of that  
5 15 has already been used.

6 With respect to this category of individuals, these  
7 potential witnesses, I'm not exactly sure what to do with them.  
8 I don't know that the plaintiffs' executive committee giving me  
9 a list of these people is going to be particularly meaningful  
10 to me, and I don't know exactly who these people are or how you  
11 anticipate calling them in for a deposition. Nor do I know  
12 whether or not they would be potentially appropriate people for  
13 this declaration category, which I do think should be part of  
14 the protocol. I do think it's an appropriate concept.

15 So I think I'm going to table that issue and ask that  
16 the parties meet and confer on that. Again, I don't have  
17 enough information to understand whether or not having the  
18 plaintiffs share that list with the Kingdom's lawyers on an  
19 attorneys' eyes only basis, which I think would address the  
20 plaintiffs' and these witnesses' concerns, I don't know whether  
21 or not the Kingdom is going to be involved in presenting these  
22 witnesses for deposition. I'm a little bit confused as to  
23 exactly what's happening with these witnesses or how they're  
24 ever going to appear for deposition. So I think that that's  
25 something that the parties should talk about and incorporate

K1DHTERO

1 into any deposition protocol.

2 I'll just note with respect to location, I know in the  
3 original deposition protocol we did contemplate every place  
4 other than the Kingdom would be an appropriate place for  
5 depositions. I think the interests are different in this case,  
6 given that these are potentially and likely either current or  
7 former employees of a sovereign nation, and so I don't think  
8 the presumption is the same as it was with respect to the other  
9 category of defendants.

10 I also appreciate the plaintiffs' concerns and those,  
11 obviously, play out the same, I think, in this case except on  
12 the other side of the scale, I think, is a different  
13 circumstance. So I'm not going to categorically rule one way  
14 or another right now, and I'm going to encourage the parties to  
15 try to work to a compromise position. But to assist in your  
16 negotiations, I don't have the same view here in this instance  
17 as I did with respect to the other depositions as to what would  
18 be an appropriate location for depositions.

19 Here's where we are. By the 3rd of February, the  
20 Kingdom is to respond to all of the individuals identified in  
21 this list. I know that that number is larger than the number  
22 that I'm authorizing, but the Kingdom is to respond to all of  
23 them, and the plaintiffs will make decisions based on that  
24 information.

25 By the 21st, which is a Friday, I want the parties to

K1DHTERO

1 submit to me a proposed deposition protocol. I'm hoping it  
2 will be submitted with a one-page cover letter that says this  
3 is agreed to by all of the parties. If not, each side can  
4 submit a short letter on issues of dispute for me to resolve.  
5 The plaintiffs will be entitled to 25 depositions of  
6 individuals under the Kingdom's control and 15 nonparty  
7 witnesses. We'll also adopt the protocol with respect to  
8 declarations, and you all should discuss an appropriate date by  
9 which you need to identify those declarants and then an  
10 appropriate date by which you're going to provide that  
11 declaration so that everybody is on notice as to how that will  
12 proceed.

13 I'm hoping that you all can come to me with a clear  
14 idea about these 35 other individuals and exactly who they are.  
15 I still don't totally understand what category they even fall  
16 into, but hopefully you can meet and confer. To the extent the  
17 plaintiffs have contact with these individuals, you should be  
18 talking with them about what's appropriate. It seems to me,  
19 based on what you're telling me, that it would be most  
20 appropriate for these individuals to submit declarations. If  
21 they're outside of the Court's jurisdiction, I don't know that  
22 you'll be able to force their deposition. In any event, you  
23 need to think a little bit more about how to handle these folks  
24 and talk with the Kingdom about them, and if appropriate, those  
25 conversations should be under an attorneys' eyes and ears only

K1DHTERO

1 discussion.

2 I'm not going to set a close date for the depositions,  
3 but keep in mind that the date that I was thinking I was going  
4 to set when I took the bench was May 13. That contemplated  
5 about 30 days to sort of get up and running, and now I think  
6 it's a little bit longer than that. But that contemplated, in  
7 my mind, needing about 30 days to get up and running and then  
8 about 60 days to take these depositions and then an additional  
9 30 days to sort of clean up and wind down. So I think that can  
10 give you some guidance. If those numbers are a little bit off,  
11 the parties should meet and confer and propose something to me,  
12 but that is around what I was thinking about.

13 I'm not ready to rule on expert witnesses. What I  
14 think I'm going to want -- and maybe you can give this to me on  
15 the 21st as well -- I still don't have a good idea about what  
16 the plaintiffs are contemplating with respect to expert  
17 witnesses and whether or not they would be appropriate in this  
18 instance. So I think what I would like would be a list of the  
19 expert or experts that the parties intend to or would offer if  
20 permitted and the subject matter of their testimony. I don't  
21 need that by the 21st, but what I do want by the 21st is a  
22 schedule to get that to me plus or minus 30 days from February  
23 21st, something like that, so that we can start to think about  
24 whether expert disclosure is appropriate or not. If I'm going  
25 to authorize expert disclosure, it's going to be right on the



K1DHTERO

1 heels of the close of these depositions and maybe even some  
2 overlap.

3 I want to keep moving us forward, and so some of these  
4 experts I appreciate you might need the testimony in order for  
5 them to render their expert opinions, some of them you might  
6 not, depending on who it is you're thinking about calling. If  
7 you're thinking about calling somebody -- I don't know that  
8 this is necessary or appropriate -- but on the history and  
9 relationship between the Kingdom of Saudi Arabia and the United  
10 States, that person doesn't need to wait for depositions. So  
11 I'd like to know who you're thinking about, and then we can  
12 figure out a schedule, if they're going to be permitted at all.

13 I am going to also speak with Judge Daniels on that particular  
14 topic, because he will ultimately be the decider for the final  
15 stage in this process. And so I think he has skin in the game  
16 as to whether or not this type of testimony would be useful for  
17 him.

18 So by the 21st, if you can just include for me a  
19 schedule -- I don't need the information yet -- but a  
20 schedule to get me these expert disclosures, again, identifying  
21 the individual and identifying the subject matter to allow the  
22 Court to evaluate whether or not that would be appropriate.

23 I think that covers everything that I wanted to cover  
24 today. Is there anything else? Yes, Mr. Carter.

25 MR. CARTER: Your Honor, I had one minor point of

K1DHTERO

1 clarification. Your Honor mentioned 15 nonparty depositions,  
2 and I'm just trying to understand whether or not that would be  
3 15 essentially substantive nonparty depositions or would that  
4 also encompass nonparty depositions that are essentially  
5 necessary for us to authenticate documents, understand codes on  
6 documents. We have quite a bit of, for instance --

7 THE COURT: Can I interrupt you. Can I ask that you  
8 and the Kingdom talk about that.

9 MR. CARTER: Sure.

10 THE COURT: I don't know exactly if there's hundreds  
11 of those people or if there's two of those people. If you  
12 could talk and make a proposal. If it's pure authentication,  
13 it may be appropriate for that not to count towards the 15 cap.  
14 I don't know who you're thinking you might need and how close  
15 it would bleed into a substantive deposition. So why don't you  
16 all discuss that category of people and let me know on the 21st  
17 what you think is appropriate.

18 MR. CARTER: Sure, your Honor. Thank you.

19 THE COURT: Is that fair?

20 MR. CARTER: Yes. Thank you, your Honor.

21 MR. RAPAWY: Your Honor, one further clarification.  
22 With regard to the 25 and the 15, to the extent that former  
23 Kingdom officials who are on the list of 54 are voluntarily  
24 appearing, those go in the 25 bucket not in the 15 bucket, is  
25 that correct?

K1DHTERO

1 THE COURT: The 25 would be everybody who's under the  
2 Kingdom's control, even if they're voluntarily appearing as  
3 part of the process. I think former employees would fall  
4 within that category.

5 MR. RAPAWY: I think our view is those individuals  
6 aren't necessarily under our control, but I understand what  
7 your Honor is saying.

8 THE COURT: OK. Let me make one last point, which is  
9 that I view formal paper discovery to now be over. We've had  
10 some litigation on this particular topic. I view now formal  
11 paper discovery to be over. I know that plaintiffs are waiting  
12 on motions for the FBI. Obviously, those need to be ruled on,  
13 and we'll get to those as soon as I can.

14 I'm also not including in that statement the  
15 possibility and, I assume, the likelihood that during a  
16 deposition someone would indicate a particular document or  
17 category of documents that was not reasonably sought or maybe  
18 was sought and not found but now the deposition makes clear  
19 that it does exist, and so follow-up in the sort of ordinary  
20 course that everybody is familiar with.

21 Yes, Mr. Pounian.

22 MR. POUNIAN: Yes, your Honor. You saw me jumping to  
23 my feet. We've been engaged in meet-and-confer with Saudi  
24 Arabia regarding its last production that this judge -- that  
25 your Honor ruled them to produce documents, and we have a

K1DHTEO

1 motion that we'd like to bring to your Honor on those  
2 documents. I was going to ask your Honor if we could simply  
3 bring the motion and not go through the preliminary step of  
4 asking for a pre-motion conference, but that motion is -- we  
5 could probably have that motion ready next week to file before  
6 your Honor. We've already gone through the meet-and-confer  
7 process with Saudi Arabia, and it's a motion that we've not had  
8 yet the opportunity to demand that they produce documents that  
9 they have so far refused to produce.

10 Specifically, one of the issues on it is they have  
11 said they've gone to the prince's office, Prince Abdulaziz's  
12 office for documents. They say it's a private office, but we  
13 have proof from the record that the prince was actually a  
14 minister of state, a member of the cabinet of Saudi Arabia, and  
15 that they never searched any of the cabinet offices of the  
16 prince for documents. I'm not going to argue the motion right  
17 now, your Honor, but that's essentially the number one issue in  
18 the motion. There are other issues in the motion, but it is a  
19 clear issue where we have a disagreement with Saudi Arabia  
20 regarding the parameters of their search and what they searched  
21 for and that they didn't look in the places where we believe  
22 the documents would be located.

23 MR. CARTER: Your Honor, if I could just add to that.  
24 We had the meet-and-confer. We went through a whole host of  
25 issues for a call that lasted for a very long time, maybe an

K1DHTEO

1 hour and a half, and we sent a letter after. I believe there  
2 are essentially three discrete issues that we want to move on.  
3 This is not a monster motion like some of the ones your Honor  
4 has seen before. It's three issues where we think either the  
5 searches just weren't conducted in accordance with your Honor's  
6 order and they need to be and one instance where we just have a  
7 disagreement, and we've asked for a 30(b)(6), which I think  
8 we'd get anyway as part of the deposition process on the nature  
9 of the searches that were conducted. So it's really three  
10 discrete, limited issues about the compliance with the Court's  
11 order.

12 THE COURT: OK. Kingdom want to be heard on this?

13 MR. RAPAWY: I mean, your Honor, this was the motion  
14 that I think they mentioned at the November 15 hearing that  
15 they said would be ready to file in two to three weeks at that  
16 time. They got us their list of issues on December 16, which  
17 was already outside that window. We followed up promptly on  
18 every communication they made. I mean, we had been  
19 anticipating that your Honor probably would permit them to file  
20 it, and if so, should get that done. I don't actually think  
21 there would be anything unfair with saying that written  
22 discovery has closed now, though we did ask for that as long  
23 ago as November. This has already taken a lot longer than they  
24 suggested it would through no fault of ours.

25 THE COURT: OK. Let's set a date for the motion. Are

K1DHTERO

1 you anticipating a brief versus a letter motion?

2 MR. POUNIAN: That's fine, your Honor, either way.

3 THE COURT: I'm asking.

4 MR. POUNIAN: I think a brief would be preferable,  
5 your Honor. If we could have 15 pages for a brief.

6 THE COURT: Today is Monday, the 13th. When would you  
7 like to file it?

8 MR. POUNIAN: In a week.

9 THE COURT: A week. Would you like to not file it on  
10 MLK Day?

11 MR. POUNIAN: Yes, your Honor.

12 THE COURT: OK.

13 MR. POUNIAN: How about a week from Wednesday?

14 THE COURT: A week from Wednesday. So you'll file it  
15 on the 22nd of January.

16 When would the Kingdom like to respond? It's a  
17 15-page brief.

18 MR. RAPAWY: I think we could do it in two weeks, your  
19 Honor.

20 THE COURT: So you will respond on February 5, and  
21 I'll give you 15 pages as well.

22 I will give the plaintiffs eight pages in a reply  
23 brief. Can you get that in a week?

24 MR. POUNIAN: That's fine, your Honor.

25 THE COURT: So your reply brief is due February 12,

K1DHTERO

1 which I think might be George Washington's birthday or Abraham  
2 Lincoln's birthday. OK. January 22, 15-page brief;  
3 February 5, a 15-page opposition; February 12, an eight-page  
4 reply brief.

5 Very well. Anything further from either side?

6 OK. So I'll hear from you by way of a brief on the  
7 22nd of January, and then I'll hear from both sides on the 21st  
8 of February with a proposed deposition protocol and letter  
9 briefs on the outstanding issues. Thank you all for being  
10 here.

11 Again, thank you to all the families for coming in. I  
12 appreciate it. Happy New Year.

13 (Adjourned)